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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192093
Party	Defendant Zero Motorcycles, Inc.
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Submission	Motion to Suspend for Civil Action
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Date	04/20/2010
Attachments	ZERO - MOT SUSPENSION OF CONSOLIDATED PROCEEDINGS 3.pdf (20 pages)(244706 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PIRELLI TYRE S.P.A. AND PIRELLI & C. S.P.A.,))	
Opposers,)	Consolidated Proceeding No.
)	91192093
)	
v.)	Mark: ZERO X
)	Serial No. 77616233
ZERO MOTORCYCLES, INC.,)	Filed: November 17, 2008
Applicant.)	Published: June 2, 2009
<hr style="width:40%; margin-left:0"/>		
		Mark: ZERO SS
		Serial No. 77665628
		Filed: February 6, 2009
		Published: June 2, 2009
		Mark: ZERO S
		Serial No. 77665629
		Filed: February 6, 2009
		Published: June 2, 2009
		Mark: ZERO DS
		Serial No. 77793886
		Filed: July 30, 2009
		Published: October 27, 2009
		Mark: ZERO MOTORCYCLES
		Registration No. 3669900
		Filed: May 27, 2007
		Registered: August 18, 2009
		Mark: ZERO
		Registration No. 3661976
		Filed: April 19, 2007
		Registered: July 28, 2009

MOTION FOR SUSPENSION OF CONSOLIDATED PROCEEDINGS

Applicant Zero Motorcycles, Inc. (“Zero”), pursuant to 37 CFR § 2.117 and TBMP Rule 510.02, moves to suspend this consolidated opposition and cancellation proceeding pending the determination of a Federal lawsuit between Zero and Opposers Pirelli Tyre S.P.A. and Pirelli & C. S.P.A (“Pirelli”). See Zero Motorcycles, Inc. v. Pirelli Tyre S.P.A. and Pirelli & C. S.P.A, Civil Action No. CV 10-01290 LB.

On March 26, 2010 Zero filed a Complaint for Declaratory Judgment in the United States District Court for the Northern District of California. On that same date Zero requested of Pirelli that the parties stipulate to a stay of the instant proceedings pending the outcome of the federal action, in order to avoid duplicative and costly litigation for both parties. Through its counsel, Pirelli has denied its consent to such a stay.

When there is a pending civil court action involving one or more of the parties that has issues in common with and may affect the outcome of a Board proceeding, it is common and appropriate for the Board to suspend the opposition proceeding for the pendency of the civil litigation. See 37 CFR § 2.117 (a) (“Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action . . . which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action . . .”); TBMP § 510.02(a) (“To the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is often binding upon the Board, while the decision of the Board is not binding upon the court . . . Ordinarily, the Board will suspend proceedings in the case before it if

the final determination of the other proceeding will have a bearing on the issues before the Board.”) In determining whether suspension is proper the Board need only examine “whether the outcome of the civil action will have a bearing on the issues involved in the opposition proceeding.” *The Other Tel. Co. v. Conn. Nat’l Tel. Co.*, 181 USPQ 125, 126 (TTAB 1974) (holding that a decision in civil action re infringement and unfair competition would have bearing on outcome of Section 2(d) claim before the Board).

The federal court action filed by Zero does have core issues in common with this consolidated proceeding, and the disposition of this action will have a direct bearing on the issues before the Board. In its Notices of Opposition and Cancellation, Pirelli seeks to prevent registration of Zero’s ZERO X, ZERO SS, ZERO S, and ZERO DS marks and seeks to cancel registration of Zero’s ZERO MOTORCYCLES and ZERO marks, alleging that it will be and is currently being damaged by such registrations because they would and do create a likelihood of confusion with its own trademark, such that registration would and does violate Section 2(d) of the Trademark Act, 15 USC § 1052(d).

Zero’s federal court action directly addresses the issues of likelihood of confusion which Pirelli has raised in its opposition and cancellation allegations. In that action Zero seeks declaratory judgment of no trademark infringement (because no likelihood of confusion), no unfair competition, cancellation of Pirelli’s trademark registration for the mark ZERO, and an injunction prohibiting Pirelli from further interfering with Zero’s trademark applications and registrations. A copy of Zero’s complaint in the District Court is attached as Exhibit “A”.

Not only does the Federal court action between these parties encompass the same issues before the Board, but it also will have a fully dispositive bearing on this consolidated proceeding. As a final federal court decision will directly affect its outcome, advancing this proceeding during the pendency of the Federal court action would be wasteful and duplicative. Therefore, it would be in the best interest of all parties involved in this proceeding for the Board to suspend the consolidated oppositions and cancellations until a final determination has been reached in the federal court action.

For the reasons set forth above, Zero respectfully requests that the Board suspend this proceeding pending the outcome in the federal court action.

Dated: April 20, 2010

Respectfully submitted,

By: /s/ *Mike Rodenbaugh*

Michael L. Rodenbaugh
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S MOTION FOR SUSPENSION OF CONSOLIDATED PROCEEDINGS** has been served on Virginia L. Carron, counsel for opposing party, by delivering a copy via facsimile to her usual place of business, leaving it with someone in his employment, at:

Virginia L. Carron
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901 New York Avenue NW
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Respectfully submitted,

April 20, 2010

ZERO MOTORCYCLES, INC.

By: /s/ Mike Rodenbaugh

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EXHIBIT A

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CLERK, U.S. DISTRICT COURT
N.D. CA-SAN JOSE

ADR

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ZERO MOTORCYCLES, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ZERO MOTORCYCLES, INC.,

11 Plaintiff,

12 v.

13 PIRELLI TYRE S.P.A. and PIRELLI & C.
14 S.P.A.,

15 Defendants.

Case No.

C V 10-01290

LB

COMPLAINT FOR:

1. Declaratory Judgment of no Trademark Infringement;
2. Declaratory Judgment of no Unfair Competition;
3. Cancellation of Defendants' Trademark Registration; and
4. Injunction Prohibiting Further Unfair Conduct by Defendants

DEMAND FOR JURY TRIAL

22 **I. JURISDICTION AND VENUE**

- 23
- 24 1. This is an action for a declaratory judgment of no trademark infringement and/or unfair
- 25 competition, of Plaintiff's right to continue to use its mark in connection with goods that
- 26 it has offered in interstate commerce since at least 2007, and for cancellation of
- 27
- 28

- 1 Defendants' US trademark registration of the word ZERO, inter alia.
- 2 2. This Court has subject matter jurisdiction based upon federal questions, under 15 U.S.C.
- 3 § 1121 and 28 U.S.C. §§ 1331 and 1338. The claims alleged in the Complaint arise
- 4 under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the Lanham Act,
- 5 15 U.S.C. §§ 1051 et seq., and focus upon the parties' respective trademark rights. This
- 6 Court also has subject matter jurisdiction based upon diversity of the parties per 28
- 7 U.S.C. § 1332, as Plaintiff is a Delaware corporation that maintains its principal place of
- 8 business within California, Defendants are Italian corporations with their principal places
- 9 of business in Italy, and the value in controversy exceeds \$75,000.
- 10
- 11 3. This Court has personal jurisdiction over Defendants because the Defendants have
- 12 sufficient contacts with the State of California and this judicial District subjecting them to
- 13 the personal jurisdiction of this Court pursuant to Cal. Code Civ. Pro. § 410.10, and
- 14 because Defendants have purposefully availed themselves to this forum.
- 15
- 16 4. Venue is proper in this Judicial District under 28 U.S.C §§ 1391.
- 17

18 **II. PARTIES**

- 19 5. Plaintiff Zero Motorcycles, Inc. is a corporation organized and existing under the laws of
- 20 the State of Delaware with its principal place of business at One Victor Square, Scotts
- 21 Valley, California 95066.
- 22
- 23 6. Upon information and belief, Defendant Pirelli Tyre S.p.A., a società per azioni of Italy,
- 24 has a place of business at Viale Sarca 222, I-20136 Milan, Italy and Defendant Pirelli &
- 25 C. S.p.A., a società per azioni of Italy, has a place of business at Via Gaetano Negri 10, I-
- 26 20123 Milan, Italy.
- 27
- 28 7. Upon information and belief, Defendant Pirelli Tyre S.p.A. is a wholly-owned subsidiary

1 of Defendant Pirelli & C. S.p.A.

2 3 **III. BACKGROUND**

4 **A. Plaintiff's Products and Marks**

5 8. Plaintiff designs, manufactures, markets and sells high performance and environmentally
6 friendly electric motorcycles.

7
8 9. Plaintiff has become a global leader in the burgeoning electronic motorcycle market,
9 selling its motorcycles in several countries under the mark ZERO MOTORCYCLES
10 since at least as early as 2007.

11 10. Plaintiff's sells its line of branded motorcycles under its ZERO MOTORCYCLES and
12 related family of ZERO-formative marks, including ZERO, ZERO S, ZERO X, ZERO
13 SS, ZERO DS, and ZERO MX (the "ZERO-formative marks").

14
15 11. Plaintiff markets and promotes its goods and services under the ZERO MOTORCYCLES
16 and ZERO-formative marks, including on its website at www.zeromotorcycles.com.
17 Since 2007, Plaintiff has continuously promoted its brand of electric motorcycles, and has
18 received much acclaim from the press and within the motorcycle industry. Plaintiff's
19 products have not only gained recognition for their high performance and environmental
20 efficiency - gaining certification from the United States Environmental Protection
21 Agency - but have also won international motorcycle racing competitions

22
23 12. Through continuous and exclusive use since 2007, Plaintiff's ZERO MOTORCYCLES
24 and ZERO-formative marks serve to identify and indicate the source of Plaintiff's
25 products to consumers throughout the United States and in many foreign countries, thus
26 creating trademark rights inuring to the benefit of Plaintiff.

27 13. Plaintiff owns the following U.S. trademark registrations and applications for the ZERO-
28

1 formative marks:

- 2 a. Reg. No. 3661976 for the mark ZERO for use on “Electric vehicles, namely,
3 motorcycles” in International Class 12;
4
5 b. Reg. No. 3669900 for the mark ZERO MOTORCYCLES for use on “Electric
6 vehicles, namely, motorcycles; Motorcycles” in International Class 12;
7
8 c. Ser. No. 77/793886 for the mark ZERO DS for use on “Electric motorcycles;
9 Motorcycles and structural parts therefor; Motorcycles for motocross” in
10 International Class 12;
11
12 d. Ser. No. 77/665629 for the mark ZERO S for use on “Electric motorcycles;
13 Motorcycles and structural parts therefore” in International Class 12;
14
15 e. Ser. No. 77/665628 for the mark ZERO SS for use on “Electric motorcycles;
16 Motorcycles and structural parts therefore” in International Class 12;
17
18 f. Ser. No. 77/616233 for the mark ZERO X for use on “Electric motorcycles;
19 Motorcycles and structural parts therefor; Motorcycles for motocross” in
20 International Class 12.
21
22 g. Ser. No. 77/757810 for the mark ZERO MX for use on “Electric motorcycles;
23 Motorcycles and structural parts therefor; Motorcycles for motocross” in
24 International Class 12.

25 14. The above marks all have been reviewed by the U.S. Patent & Trademark Office
26 (“USPTO”) and have been allowed for registration subject to resolution of this dispute
27 with Defendants, or already have been registered on the Principal Register and
28 subsequently the Defendants have petitioned to cancel those registrations.

15. Plaintiff has made similar trademark filings in the European Union, Switzerland and
several other countries; and Defendants have taken similar actions against Plaintiff in the

1 EU and Switzerland thus far.

2 16. Despite several years of co-existence, Plaintiff is not aware of any instance or evidence of
3 actual confusion between its products and those of Defendants.
4

5
6 **B. Defendants' Products and Marks**

7 17. Defendants manufacture and sell a variety of products, including wheels and tires for
8 vehicles.

9 18. Defendants own six U.S. trademark registrations that include the term "ZERO". Each
10 lists, as the only goods offered under the marks – vehicle tires or tires; pneumatic, semi-
11 pneumatic and solid tires for vehicle wheels; and/or wheels for vehicles, inner tubes,
12 rims, structural and replacement parts. These marks include:

13 a. Reg. No. 2749340 for the mark ZERO for use on "Tires; pneumatic, semi-
14 pneumatic and solid tires for vehicle wheels; wheels for vehicles, inner tubes,
15 rims, structural and replacement parts therefore;"

16 b. Reg. No. 1625883 for the mark PZERO for use on "Vehicle tires;"

17 c. Reg. No. 2847159 for the mark ZERO NERO for use on "Tires; pneumatic, semi-
18 pneumatic and solid tires for vehicle wheels; wheels for vehicles, inner tubes,
19 rims, structural and replacement parts therefore;"

20 d. Reg. No. 2783614 for the mark ZERO GIALLO for use on "Tires; pneumatic,
21 semi-pneumatic and solid tires for vehicle wheels; wheels for vehicles, inner
22 tubes, rims, structural and replacement parts therefore;"

23 e. Reg. No. 3038910 for the mark SOTTOZERO for use on "Tires; pneumatic,
24 semi-pneumatic and solid tires for vehicle wheels; wheels for vehicles, inner
25 tubes, rims, structural and replacement parts for all the aforesaid goods;" and
26
27
28

1 f. Reg. No. 2337503 for the mark P ZERO ROSSO for use on “Tires; pneumatic,
2 semi-pneumatic and solid tires for vehicle wheels; wheels for land vehicles and
3 parts therefore, namely, inner tubes and rims.”

4 19. On information and belief, Defendants do not use any of the above marks, nor any other
5 ZERO-formative marks, on motorcycle tires or vehicle wheels for motorcycles, or
6 otherwise in relation to motorcycles.
7

8 20. On information and belief, Defendants do not use any of the above marks or any ZERO-
9 formative marks in connection with the marketing or sale of any land vehicles, including
10 motorcycles.
11

12 **C. Defendants Have Created a Justiciable Controversy Requiring Resolution by the Court.**
13

14 21. In March 2009, Defendants began a global campaign against Plaintiff’s trademark
15 applications and registrations by commencing a series of opposition and cancellation
16 filings against Plaintiff’s marks in the USPTO, European Union and Switzerland. To
17 date, Defendants have filed the following opposition and cancellation actions in the
18 USPTO, which are pending:

- 19 a. Oppositions of Plaintiff’s marks ZERO S (Ser. No. 77665629), ZERO SS (Reg.
20 No. 77665628), ZERO X (Ser. No. 77616233), all filed on June 12, 2009 and
21 consolidated into Proceeding No. 91192093 on September 29, 2009;
22
23 b. Cancellation of Plaintiff’s mark ZERO (Reg. No. 3661976) filed on September
24 29, 2009, Proceeding No. 92051520;
25
26 c. Opposition of Plaintiff’s mark ZERO DS (Ser. No. 77793886) filed on October
27 29, 2009, Proceeding No. 91192475;
28
d. Cancellation of Plaintiff’s mark ZERO MOTORCYCLES (Reg. No. 3669900)

1 filed on December 15, 2009, Proceeding No. 92051859.

2 e. Opposition of Plaintiff's mark ZERO MX (Ser. No. 77757810) filed on March 25,
3 2010, Proceeding No. 91194280

4 22. Defendants have also attacked Plaintiff's foreign trademark applications and registrations
5 by filing cancellation and opposition proceedings in Switzerland and the European
6 Union, which are pending.

7
8 23. In June 2009, Plaintiff proposed a settlement offer to Defendants in an attempt to resolve
9 Defendants' concerns with Plaintiff and its marks. Essentially Plaintiff sought, and still
10 seeks, a formal 'co-existence' agreement with Defendants, with each recognizing the
11 other's trademark rights globally. To date, Defendants have refused to respond to this
12 settlement proposal, other than by filing four additional actions in the USPTO, including
13 the Petition to Cancel Plaintiff's trademark registration for ZERO MOTORCYCLES,
14 which is also Plaintiff's corporate name and primary identity.

15
16 24. In the USPTO proceedings, Plaintiff proposed that the parties enter into mediation as
17 suggested by the Trademark Trial and Appeal Board (TTAB), in an effort to efficiently
18 resolve the issues between the parties and avoid the costly and time consuming litigation
19 of the numerous and separate actions brought by Defendants. Defendants have refused to
20 participate in mediation.

21
22 25. Defendants' oppositions and cancellations before the TTAB each allege a prima facie
23 case of trademark infringement against Plaintiff by stating that Plaintiff's marks are
24 "likely to cause confusion, or to cause mistake, or to deceive in violation of [the Lanham
25 Act] Section 2(d), 15 U.S.C. § 1052(d)."

26 26. Defendants have commenced a series of costly and time-consuming actions in various
27 administrative fora. Those fora cannot finally determine any of the issues involved with
28

1 the parties' coexisting uses and registrations of their marks globally. Any issues resolved
2 by the TTAB (and/or any of the foreign fora) then could be litigated anew, in addition to
3 further issues of trademark usage as opposed merely to registration, in any court of
4 competent jurisdiction. That additional, likely litigation would multiply the costs and lost
5 resources of both parties, and significantly extend the time that damages hypothetically
6 would accrue in the unlikely event that a judgment for infringement was entered against
7 Plaintiff.
8

9 27. Defendants' apparent strategy is to propound litigious proceedings against a much
10 smaller company simultaneously in many fora around the globe. This is particularly
11 threatening to Plaintiff, in light of Defendants' apparent ability to sue Plaintiff in court at
12 any time, in any country where the parties do business, even after all TTAB and other
13 administrative actions have reached their conclusion.
14

15 28. Defendants' many trademark opposition and cancellation actions - all in fora that have no
16 true final determinative power over the issues between the parties - and Defendants'
17 refusals to discuss settlement options or to mediate, collectively show a substantial and
18 immediate controversy justifying the declaratory and injunctive relief that Plaintiff seeks.
19

20 29. Thus, Plaintiff seeks to avoid duplicitous and extended litigation, before the TTAB, in
21 foreign trademark offices, and/or in U.S. or foreign courts, by requesting an appropriate
22 declaratory judgment and permanent injunction from this Court.

23 //

24 //

25 //

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1 **IV. CLAIMS FOR RELIEF**

2 **COUNT I**

3 **Declaration of no Trademark Infringement**

4 30. Plaintiff restates and re-alleges paragraphs 1-29 of this Complaint as though fully set
5 forth herein.

6
7 31. Plaintiff believes that it may be sued by Defendants and/or subject to liability to them for
8 trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), if
9 Plaintiff continues its activities, including manufacturing, marketing, distribution, and
10 sales of its electric motorcycle products bearing the ZERO MOTORCYCLES and
11 ZERO-formative marks.

12 32. An actual and substantial controversy exists between Defendants and Plaintiff to warrant
13 the issuance of a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02.

14
15 33. There is no likelihood of confusion between Plaintiff's ZERO MOTORCYCLES and
16 ZERO-formative marks and the marks of the Defendants.

17 34. Plaintiff's use of its ZERO MOTORCYCLES and ZERO-formative trademarks does not
18 infringe Defendants' trademark rights.

19 35. Defendants are not entitled to injunctive relief nor to any of the monetary remedies set
20 forth in Section 35 of the Lanham Act, 15 U.S.C. § 1117 (including but not limited to
21 profits, damages, costs, or attorneys' fees), for trademark infringement based on
22 Plaintiff's use of its ZERO MOTORCYCLES and ZERO-formative marks in connection
23 with the manufacture, marketing, distribution, and sale of electric motorcycles and related
24 products.
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36. Plaintiff restates and re-alleges paragraphs 1-29 of this Complaint as though fully set forth herein.
37. Plaintiff believes that it may be sued by Defendants and/or subject to liability to them for trademark infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), if Plaintiff continues its activities, including manufacturing, marketing, distribution, and sales of its electric motorcycle products bearing the ZERO MOTORCYCLES and ZERO-formative marks.
38. An actual and substantial controversy exists between Defendants and Plaintiff to warrant the issuance of a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02.
39. Plaintiff's activities, including its use of its ZERO MOTORCYCLES and ZERO-formative marks, do not constitute unfair competition or infringement of Defendants' purported rights under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
40. Defendants are not entitled to injunctive relief or to any of the monetary remedies set forth in Section 35 of the Lanham Act, 15 U.S.C. § 1117 (including but not limited to profits, damages, costs, or attorneys' fees) based on Plaintiff's use of its ZERO MOTORCYCLES and ZERO-formative marks in connection with the manufacture, marketing, distribution, and sale of electric motorcycles and related products.

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COUNT III

Cancellation of Trade mark Registration No. 2749340

41. Plaintiff restates and re-alleges paragraphs 1-29 of this Complaint as though fully set forth herein.

42. Defendants have registered the word ZERO with the USPTO for tires, wheels, rims and their parts.

43. On information and belief, Defendants are not using a “ZERO” trademark in connection with such products in U.S. commerce.

44. On information and believe, Defendants have never used a “ZERO” trademark in connection with such products in U.S. commerce.

45. In maintaining this U.S. trademark registration, Defendants have fraudulently asserted that they were making such use, yet provided evidence of use showing only a “P ZERO” mark.

46. Defendants have abandoned any trademark rights they had in “ZERO” alone and apart from their other ZERO-formative marks, via such non-use in U.S. commerce.

47. Defendants have committed fraud on the USPTO by falsely asserting such use, and by providing incapable evidence of such use which they falsely asserted was capable evidence.

48. Based upon Defendants’ abandonment and/or fraud on the USPTO, trademark registration no. 2749340 must be cancelled immediately.

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1 **COUNT IV**

2 **Permanent Injunction**

3 49. Plaintiff restates and re-alleges paragraphs 1-29 of this Complaint as though fully set
4 forth herein.

5 50. Plaintiff will be irreparably harmed if Defendants are not permanently enjoined from
6 prosecuting their trademark opposition and cancellation proceedings in the USPTO,
7 Switzerland, European Union and anywhere else in the world.
8

9 51. This harm is not redressable by money damages, particularly to the extent that Plaintiff's
10 commercial relationships and executive resources are negatively affected, causing loss of
11 prospective customers and business goodwill. If not enjoined, Plaintiff would need to
12 maintain conduct of multiple litigation proceedings versus the Defendants in several fora
13 around the world, and potentially in any court(s) around the world.
14

15 52. This harm far outweighs any legitimate benefit to Defendants from continuing the
16 harassing, illegitimate and duplicitous litigation it has commenced in so many fora to
17 date, with no end in sight.

18 53. It would best serve the public interest, and is within this Court's equitable powers, to
19 grant the injunctive relief requested by Plaintiff.
20

21 **PRAYER FOR RELIEF**

22
23 Plaintiff Zero Motorcycles, Inc. prays for judgment as follows:

- 24 1. For a declaration from this Court that Plaintiff's ZERO MOTORCYCLES and
25 ZERO-formative marks do not infringe the trademark rights nor any other
26 purported rights of Defendants;
27 2. For a declaration from this Court that Plaintiff's activities, including its
28

1 manufacturing, marketing, distribution, and sales of its electric motorcycle
2 products bearing the ZERO MOTORCYCLES and ZERO-formative marks, do
3 not constitute unfair competition;

4 3. For a declaration from this Court that Plaintiff's activities, including its
5 manufacturing, marketing, distribution, and sales of its electric motorcycle
6 products bearing the ZERO MOTORCYCLES and ZERO-formative marks,
7 have not caused cognizable harm or monetary damage to Defendants.

8 4. For a declaration from this Court that Plaintiff is entitled to use, register, and
9 maintain registrations for its ZERO MOTORCYCLES mark and all its ZERO-
10 formative marks for the goods and services set forth above, in the United States
11 and throughout the world;

12 5. For a declaration from this Court that Defendants' trademark registration for
13 the word ZERO shall be canceled by the USPTO for non-use and for fraud in
14 maintaining its registration;

15 6. For an injunction from this Court prohibiting Defendants from interfering with
16 Plaintiff's use of its ZERO MOTORCYCLES and ZERO-formative marks, by
17 requiring Defendants to dismiss the aforementioned Cancellation and
18 Opposition actions pending at the TTAB with prejudice, and by prohibiting
19 Defendants from otherwise interfering with the USPTO trademark registration
20 process with respect to Plaintiff's ZERO MOTORCYCLES and ZERO-
21 formative marks.

22 7. For an injunction from this Court precluding Defendants from interfering with
23 Plaintiff's use of its ZERO MOTORCYCLES and ZERO-formative marks
24 worldwide, including requiring Defendants to dismiss their foreign trademark
25

proceedings in Switzerland, the European Union and/or anywhere else in the world, with prejudice, and by prohibiting them from filing similar actions elsewhere.

8. For Plaintiff's costs of suit incurred;
9. For Plaintiff's reasonable attorneys' fees;
10. For such other relief to Plaintiff as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully requests a trial by jury on all issues raised by this Complaint.

Respectfully submitted,

Dated: March 26, 2010

RODENBAUGH LAW

By: /s/ Mike Rodenbaugh
Mike Rodenbaugh

Attorneys for Plaintiff
ZERO MOTORCYCLES, INC.